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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,922	06/27/2003	Ravindra K. Pandey	25886-0094	8140
20985	7590	06/04/2004	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			NWAONICHA, CHUKWUMA O	
			ART UNIT	PAPER NUMBER
			1621	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,922

Applicant(s)

PANDEY ET AL.

Examiner

Chukwuma O. Nwaonicha

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-124 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-124 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group 1: Tetrapyrrole compounds and their pharmaceutical compositions according to claims 1-23, 25-28, 56, 58-61, 84, 89, 91-94, 117 and 122-124, classified in class 540, subclass 145.

Group 2: An article of manufacturing, comprising a compound of claim 1 according to claim 24, 57 and 90, classified in class 540, subclass 145.

Group 3: A method for administering a therapy to a target according to claims 30-43, 63-70 and 96-103, classified in class 514.

Group 4: A method of diagnosing an infecting agent in a patient according to claims 44-46, 77-79 and 110-112, classified in class 435.

Group 5: A method of generating an image of a target tissue or target composition in a subject according to claims 47-48, 80-81 and 113-114, classified in class 435.

Group 6: A method of labeling a target tissue for diagnostic radiology according to claims 49 and 115, classified in class 424, subclass 1.11.

Group 7: A method of providing a medical therapy to an animal according to claims 50-51, 83 and 116, classified in class 514.

Group 8: A kit to treat hyperproliferative disorders according to claims 52-53, 85-86 and 118-119 classified in class 514.

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Group 9: A combination according to claims 54-55, 87-88 and 120-121, classified in class 536.

Group 10: A method of photodynamic therapy for treating hyperproliferative tissue in a subject according to claims 71 and 104, classified in class 424.

Group 11: A method for detecting the presence of a hyperproliferative tissue in a subject according to claims 72-76 and 105-109, classified in class 424.

The invention of Groups 1-11 are independent and patentably distinct because there is no patentable co-action among the various groups and a reference anticipating one member will not render another obvious.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and as shown by their different classification, a search of the eleven groups designated above would impose an undue burden upon the examiner, and restriction for examination purposes as indicated is therefor proper.

Claims 29, 62 and 95 have not been included because they are non-statutory.

The method of use claims will be examined along with the elected invention and commensurate in scope therewith.

A telephone call was made to Stephanie Seidman on 5/31/04 to request an oral election to the above restriction requirement, but did not result in an election being made.

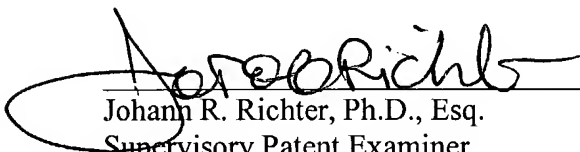
Applicant is requested to elect a specifically disclosed species of the invention to be examined for search purposes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chukwuma O. Nwaonicha whose telephone number is 571-272-2908. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chukwuma O. Nwaonicha, Ph.D.
Patent Examiner
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